SPRINGERVILLE POLICE	RULES AND REGULATIONS
DEPARTMENT	
SUBJECT: COMPLAINTS AGAINST	NUMBER: 1-9
DEPARTMENT PERSONNEL	
EFFECTIVE DATE: August 1999	
AMENDS/SUPERSEDES:	APPROVED:
	Steve
	West/Chief of Police

NOTE:

This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS:

Criminal misconduct
Complaint
Due process
Financial disclosure statements
Internal investigations
Lineups, photographs of employees
Medical/laboratory examinations of employees

I. POLICY:

The image of the department depends on the personal integrity and discipline of all departmental employees. To a large degree, the public image of this department is determined by the professional response of the department to allegations of misconduct against it or its employees. The department must competently and professionally investigate all allegations of misfeasance, malfeasance, nonfeasance by employees and complaints bearing on the department's response to community needs.

II. PURPOSE:

To describe procedures for making complaints against department personnel, for investigating complaints, and to list and define the dispositions of complaints.

III. PROCEDURES - GENERAL

- A. The department encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Department members shall receive complaints courteously and shall handle them efficiently. All officers are obligated to explain to inquiring citizens the complaint procedures.
- B. The department recognizes that its personnel are often subject to intense pressures in the discharge of their duties. The employee must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In such situations, work, actions, and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for the investigation of the more serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of police work.
- C. A copy of "How to Make A Complaint" will be given to any citizen requesting information on how to make a complaint against the department or an employee of the department. A copy of "How to Make a Complaint" is found in the appendix to this order.

D. Responsibility for handling complaints:

As a rule, complaints regarding law enforcement operations will be handled through the chain of command. Complaints involving how police service is provided or a failure to provide service or improper attitudes or behavior normally will be investigated and handled by the supervisor or by the chief of police. The chief of police may ask an investigator from another agency or the Department of Public Safety to undertake the investigation.

E. Receipt of complaints:

- Complaints, regardless of nature, can be logged in person, by mail, or by telephone at any
 time. As part of the follow-up investigative activity, persons making complaints by mail or
 telephone normally shall be interviewed and a written signed complaint prepared. A copy of
 the complaint form is found in the appendix to this order. Anonymous complaints shall be
 followed up to the extent possible.
- 2. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of citizen complaints. An employee of the department, who interferes with, discourages or delays the making of such complaints shall be subject to disciplinary action.
- 3. Normally, a citizen with a complaint will be referred to the chief of police who shall assist the citizen in recording pertinent information. The chief of police will determine investigative responsibilities.
- 4. If the chief or sergeant determines that the complainant is apparently under the influence of an intoxicant or drug, or apparently suffers from a mental disorder, or displays any other trait or condition bearing on his or her credibility, he shall note such conditions on the reverse side of the complaint form. Any visible marks or injuries relative to the allegation shall be noted and photographed.
 - a. Prisoners or arrestees also may make complaints, although circumstances may require a department representative to meet the complainant at a jail or prison for an interview. If appropriate, the police representative will have photographs taken of prisoners' injuries.

- 5. A department member receiving a citizen complaint through U.S. mail shall place the correspondence and envelop in a sealed envelope and forward it to the chief of police, who will determine investigative responsibility.
- 6. Complaints received by telephone by dispatchers or other employees will be courteously and promptly referred to the sergeant or chief of police. The dispatcher or employee shall record the name and telephone number of the complainant and state that the chief of police or, if unavailable, the sergeant shall call back as soon as practicable.
- 7. Complaints normally will not be accepted more than thirty days after the alleged incident, with the following exceptions:
 - a. When the act complained of is a criminal violation in which case the criminal statute of limitations will prevail.
 - b. When the complaining person can show good cause for not making the complaint earlier
- 8. The above procedure may also be used when department employees desire to enter a complaint against any other employee governed by this order.

F. <u>Disposition of Complaints:</u>

The chief of police shall:

- 1. Maintain complaint files separate from personnel files.
- 2. Take appropriate disciplinary action following the investigation.

G. Disposition of serious complaint:

- Serious complaints allege violations of the law or gross negligence in violating or failing to
 enforce civil rights of citizens. The term "serious complaint," in this manual, is synonymous
 with "internal investigation." Internal investigations examine alleged brutality, gross
 excesses of legal authority, or allegations, involving supervisory personnel, or multiple
 police personnel.
- 2. In such cases, the chief of police shall:
 - a. Record, register, control, or cause to be recorded, registered, or controlled the investigations of employees;
 - b. Supervise the activities under "a";
 - c. Maintain confidential records of same.
 - d. Maintain close liaison with the prosecuting attorney in investigating alleged criminal conduct. Where liability is at issue, the chief shall similarly maintain contact with the town attorney.

IV. PROCEDURES: Investigative

Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case.

- A. Interview for administrative purposes: If the chief of police wishes to compel an employee to answer questions directly related to his or her official duties and the chief is willing to forego the use of such answers in a criminal prosecution, the chief of police or another interviewer shall advise the employee that:
 - 1. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
 - 2. All questions specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
 - 3. Neither answers given nor any information obtained by reason of such statements are admissible against the employee in any criminal proceeding.
 - a. Read to the employee the following:
 - " I wish to advise you that you are being questioned as part of an official investigation of the police department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges, which could result in your dismissal from the police department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges."
 - 4. In an interview for administrative purpose, no <u>Miranda</u> rights are required. Further, the foregoing rules are inconsistent with <u>Miranda</u> in that employees' statements cannot be used as evidence. Further, as the interview does not serve criminal prosecution, the employee has no Sixth Amendment right to counsel.
 - a. The governing case is <u>Garrity v. New Jersey</u>, 385 U.S. 483, 87 S. Ct. 616 (1967).
 - b. The interviewing officers shall use the "administrative proceedings rights" form found in the appendix to this instruction.
- B. <u>Interviews for criminal investigative purposes:</u> If the chief of police believes that criminal prosecutions are possible and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, he or another interviewer shall:
 - 1. Give the employee Miranda rights.
 - 2. Advise the employee that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal.

- a. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.
- b. Note that the <u>Miranda</u> admonition includes the provision that a lawyer may be present at an interview. Although technically the employee has no right to counsel <u>until</u> the employee has been criminally charged or his or her freedom of action has been deprived, the department wishes the employee to have the option. The department wishes no possibility to arise in which its actions might be construed coercive.
- c. The governing case is <u>Gardner v. Broderick</u>, 392 U.S. 273, 88S. Ct. 1913, 1916 (1968). The case made clear that a public employee may not be fired for asserting his Fifth Amendment right not to incriminate himself.

V. INVESTIGATIVE TOOLS AND RESOURCES

In addition to interviews of the employee and witnesses, the chief of police may require other activities in support of a complaint investigation or internal investigation, including:

A. Medical and Laboratory Examination

The chief of police or officer in authority may, based on his observation, require a department employee to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.

- 1. If the employee is believed to be under the influence of alcohol, a licensed intoxilyzer operator shall administer the test. The chief of police or officer in authority shall witness the test and sign the report.
- 2. If the employee has a reading of .05 or higher, or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the chief of police or officer in authority.
- 3. If the employee is believed to be under the influence of self-administered drugs, he may be compelled to submit to a blood and/or urine test. The blood test shall be administered under medical supervision where hygienic safeguards are met. The sample will be handled using the same safeguards as evidence in a criminal process.
- 4. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty as soon as possible by the chief of police or other officers in authority.
- 5. If an employee refuses to submit to a test, (alcohol or drugs) then the chief of police or other officer in authority will immediately relieve the employee from duty for failure to cooperate in an administrative investigation.

B. <u>Photograph and Lineup Identification Procedures:</u>

1. A photo identification book of department employees may be maintained for the purpose of identification by citizens of an employee accused of misconduct. Photographs of employees

for the identification book are required by the department and shall be used when narrowly related to the employee's job.

 Photographs or videotape pictures of employees, with or without an employee's consent, may be taken for the purpose of internal investigations as related to the employee's job when the employee is suspected of misconduct.

C. Financial Disclosure Statements:

An employee may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial gain. Any evidence gained during the investigation of an administrative matter cannot be used in any criminal proceeding.

Use of polygraph examinations in internal investigations shall be in accordance with the departmental policy regarding its use (see following paragraph).

D. Polygraph

- 1. Policy: All police personnel, effective with the promulgation of this policy, shall be required to submit to a polygraph when ordered to do so by the chief of police, or by another superior officer with the authorization of the police chief.
- 2. The police chief or his designee may order employees to take a polygraph when charged with a violation of any rule, regulation, general order, or directive of this department.
- 3. The results of the polygraph examination shall not be used as the sole basis for disciplinary action against any employee.
- 4. Any polygraph examination administered under the provisions of this policy and procedure shall be administered by a private contractor licensed to administer polygraph examinations in the State of Arizona or must be a licensed examiner from another law enforcement agency.
- Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges in the polygraph examination shall be grounds for disciplinary action and may result in dismissal from the department.
- 6. In order to comply with federal (privilege against self-incrimination) law, the following information must be provided to the officer asked to submit to such examination:
 - a. The nature of the inquiry, the name and rank of the investigating officer, and the name and rank of any person present during the examination.
 - b. That his answers will not be used to prosecute him.
 - c. That he may refuse to take the polygraph or examination to answer any questions, however, such refusal shall be grounds for disciplinary action that may include dismissal.
 - d. That answers given during the polygraph examination do not constitute a waiver of the privilege against self-incrimination as it relates to criminal matters.

- e. A Polygraph Examination Acknowledgment of Rights form must be initialed and signed in the spaces indicated (see appendix to this instruction). Refusal to do so shall be grounds for disciplinary action that may result in dismissal.
- 7. The declaration is here made that the intent of all of the above is that any person who refuses to submit to polygraph examination or refuses to answer any questions pertaining to the charges in such an examination may be terminated from employment.

VI. ADJUDICATION OF COMPLAINTS:

- A. The chief of police will classify completed internal affairs investigations as:
 - 1. Unfounded no truth to allegations.
 - Exonerated allegations true, but the result of adherence to proper and appropriate police procedures and techniques.
 - 3. Not sustained unable to verify the truth of the matters under investigation.
 - 4. Sustained allegations true.
 - 5. Completed investigations classified as unfounded, exonerated or not sustained will be maintained in internal affairs files in the chief's office. Sustained complaints that result in disciplinary actions including counseling or a letter of instruction will be maintained in the internal affairs files and may be filed in the employee's department personnel file. Sustained complaints that result in disciplinary action including written reprimands, demotions, suspensions without pay, or terminations will be filed in the individual employee's department personnel file with a copy in the internal affairs files.
- B. Disciplinary action taken shall be determined by the seriousness of the violation or the extent of injury to the victim. It shall be commensurate with the circumstances surrounding the incident and in consideration of the officer's service record and prior sustained complaints. See RR1-7 for details.

VII. DUE PROCESS:

- A. The Fourteenth Amendment to the Constitution provides that a citizen may not be deprived of "life, liberty, or property, without due process of law." Public employees have a limited property interest in continued employment sufficient to require due process in any administrative proceedings that might result in suspension or dismissal.
- B. The department seeks to observe due process of law in the philosophy of the 14th Amendment in any disciplinary proceeding. Nevertheless, the foregoing rules circumscribe when legal counsel may or may not be used during interviews of employees suspected of misconduct.
- C. Despite an employee's limited property interest in his job, as described in paragraph A, the simple fact that an employee has held a job for years does not entitle him or her to keep it.
- D. The department recognizes that an employee, though dismissed or suspended, may have a liberty interest to enjoy future employment elsewhere and, if suspended or dismissed, should have an opportunity to set forth his or her point of view for name-clearing purposes. In view

of this interest, the department affords an employee a hearing in accordance with the provisions of RR 1-7.

HOW TO MAKE A COMPLAINT

- 1. If you wish to make a complaint about the actions of a police officer or about any aspect of police operations, please:
 - a. Come to the department and tell any employee that you want to make a complaint; or
 - b. Call the department and tell the person answering the phone that you want to make a complaint; or
 - c. Write your complaint and mail it to the chief of police.
- 2. A supervisory officer will assist you in filling out a report of complaint against police personnel form. This form asks you to identify yourself and then to give specific details about your complaint.
- 3. Your complaint will then be investigated. You may be contacted and asked additional questions about your complaint.
- 4. If you would like to be contacted about the outcome of your complaint, then when your complaint has been investigated, the chief of police will review the investigation and will write you a letter explaining what has been found out about the matter.

Appendix to RR 1-9

REPORT OF COMPLAINT AGAINST POLICE PERSONNEL

Name of	
Complainant:	
At what address can you be	
contacted?:	
What phone number? Residence:	Employment:
Date and time of incident:	
Location of incident:	
Name of officer(s) against whom complaint is be number, etc.)	eing filed, or other identifying marks (car number, badge
Rank: Name:	
I.D. # Badge:	
Vehicle:	
Name(s)/address/phone number or other identify	ving information concerning witness:
Statement of allegation:	
(If further space is needed use reverse side of	f sheet)
Department and may be the basis for an investig the facts contained herein are complete, accurate	complaint will be submitted to the Springerville Police gation. Further, I sincerely and truly declare and affirm that e, and true to the best of my knowledge and belief. Further, n made by me voluntarily without persuasion, coercion, or
complaint is filed may be entitled to request a	as of the police department, the officer against whom this hearing before a personnel appeals board. By signing and before a personnel appeals board, if one is requested by an matters relevant to this complaint.
Signature of Complainant	Date
Signature of Complainall	Date

Check if complainant refused to sign	
Signature of Person Receiving Complaint	Date and Time Received
Appendix to RR 1-9	

ADMINISTRATIVE PROCEEDINGS RIGHTS NOTICE OF ALLEGATIONS

NAME_		_DATE	TIME		
	ver an investigation by an agency focuses on matters which for punitive reasons of a law enforcement officer, the follow				
1.	Any questions of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer or at the office of the local precinct or police unit to the officer being investigated, unless circumstances dictate otherwise.				
2.	efore questioning the officer, he shall be informed of (1) the name and rank of the investigating officer and of ay individual to be present during the questioning and (2) the nature of the investigation.				
Departm	mental policy provides that:				
1. 2.	You are entitled to read the complaint lodged by the complainant. Refusal to answer all questions pertaining to the allegations made by the complainant, either orally or in writing, shall be grounds for disciplinary action and may result in dismissal from the department. The answers given during the investigation of an administrative matter will not be used against you in any criminal proceedings. The answers given do not constitute a waiver of your privilege against self-incrimination as related to criminal matters. Before being formally charged, during an administrative investigation, no attorney will be permitted to be present.				
3.					
4.					
5.					
Accordi	ingly, you are hereby advised that the following allegations	nave been directed to	you:		
	LAINANT(S):	1			
	dersigned hereby acknowledges receipt in writing of the ong to administrative proceedings.	charges or allegations	against him and his rights as		
	Signature		_		

Appendix to RR 1-9

POLYGRAPH EXAMINATION ACKNOWLEDGMENT OF RIGHTS

	have been ordered by		
to submit to a polygraph examination as a condition of employment in connection with the investigation of			
·			
I understand that my answers to such to be used to prosecute me (initial)	examination, as they relate to the above referenced investigation, will not		
	nch examination and/or to answer questions pursuant to such examination ude termination of my employment (initial)		
I understand that my responses do not to criminal matters (initial)	constitute a waiver of my privilege against self-incrimination as it relates		
I understand my refusal to sign this for employment (initial)	rm shall lead to disciplinary action which may include termination of my		
Employee Signature			
Date	Date		
CERTIFICATE TO BE COM	PLETED IN EVENT OF REFUSAL TO SIGN FORM		
I,	_, hereby certify this form		
(Name and Rank) was presented to	on this date in		
(Name and Rank) connection with the above referenced investigate	ion, that the		
contents of the form were made known to him,	and that failure to		
sign the form was grounds for disciplinary action	on, including		
dismissal from employment, said			
refused in my presence to sign this form.			
(Employee Signature)	(Witness Signature)		
(Date)	(Date)		
Appendix to RR 1-9			